

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LAWRENCE LEE BYARD,

Defendant-Appellant.

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UNPUBLISHED

January 20, 2005

No. 249519

Cheboygan Circuit Court

LC No. 01-002488-FH

Before: Smolenski, P.J., and Saad and Bandstra, JJ.

PER CURIAM.

Defendant appeals from a restitution award that ordered defendant to pay \$659,128.09 in restitution to Allstate Insurance Company and \$280,000 in restitution to the victim. Defendant agreed to make full restitution as part of a nolo contendere plea to operating a vehicle while visibly impaired due to the consumption of alcohol causing serious injury.<sup>1</sup> We affirm, but remand for further proceedings as discussed below.

I

We typically review a trial court's award of restitution for an abuse of discretion. *People v Newton*, 257 Mich App 61, 68; 655 NW2d 504 (2003). However, when the determination of restitution involves statutory interpretation, the review is de novo. *Id.*

II

Defendant argues that the trial court should not have awarded the victim \$250,000 for pain and suffering under MCL 780.766(5). MCL 780.766(5) states, "If a crime resulting in bodily injury also results in the death of a victim or serious impairment of a body function of a victim, the court may order up to 3 times the amount of restitution otherwise allowed under this section." In determining what meaning a statute should be given, "the plain language of the statute [should] be enforced." *People v Gahan*, 456 Mich 264, 270; 571 NW2d 502 (1997).

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<sup>1</sup> MCL 257.625(5).

Because there was no dispute that the victim suffered a serious impairment of a body function, the trial court was authorized to assess restitution under this section of the statute. Significantly, the plain language of the statute gave the trial court discretion to award as much as triple any other allowed restitution, but neither limits nor specifies what the trial court may consider in exercising its discretion to do so.

Defendant says that, because the victim did not suffer any out-of-pocket expenses, no restitution was “otherwise allowed under this section.” MCL 780.766(5). However, the trial court ordered defendant to pay \$659,128.09 to Allstate Insurance Company for medical expenses and lost wages paid for the victim. MCL 780.766(4)(a) & (c) allows a court to award restitution for medical bills and lost wages. MCL 780.766(8) allows courts to award restitution to any person, government entity, or business or legal entity which compensates the victim for losses arising out of a defendant’s criminal conduct. Therefore, the award of restitution to Allstate was restitution “otherwise allowed under this section,” and the \$659,128.09 award could potentially be tripled under MCL 780.766(5). Thus, the trial court did not err when it awarded \$250,000 to the victim under MCL 780.766(5).

### III

Defendant maintains that the trial court erred when it awarded \$30,000 to the victim for future lost wages. MCL 780.766(4)(c) allows a court to order a defendant to “[r]eimburse the victim or the victim’s estate for after-tax income loss suffered by the victim as a result of the crime.” An award of restitution, if contested, must be proven by a preponderance of the evidence. MCL 780.767(4). Restitution should only compensate for losses that are “(1) easily ascertained and measured and (2) a direct result of the defendant’s criminal acts.” *People v White*, 212 Mich App 298, 316; 536 NW2d 876 (1995). While we acknowledge that there may be sufficient evidence in support of the lost wage award, our review of the record leads us to conclude that the basis for the trial court’s award is unclear. Accordingly, we remand this case to the trial court for further development of the record on this issue.

### IV

Defendant asserts that the trial court erred in awarding the full \$659,128.09 in restitution to Allstate, when Allstate was reimbursed by the Michigan Catastrophic Claims Association (MCCA) for all of its losses over \$250,000. Defendant argues he should only have to reimburse Allstate for \$250,000.

The Legislature intended to include insurance companies and the state as victims who may seek restitution for money paid to a victim for a defendant’s criminal act. *People v Orweller*, 197 Mich App 136, 139; 494 NW2d 753 (1992). Contrary to the implication of defendant’s argument, there is no statutory requirement that a party such as MCCA file a claim to receive restitution. Rather, as the trial court must order defendant to make full restitution, the court did not err in ordering defendant to pay \$659,128.09 in medical bills and lost wages. MCL 780.766(2). On appeal, the prosecution states that it has no objection to an order that would require defendant to reimburse the MCCA directly for \$409,128.09 and to reimburse Allstate for

\$250,000. We agree with defendant that the trial court erred when it ordered him to pay the full amount of the medical expenses to Allstate, but we reject defendant's argument that he should only be required to pay \$250,000 to Allstate and nothing to MCCA.<sup>2</sup> Instead, we agree that the award should be allocated to MCCA and Allstate in the manner suggested by the prosecution, with the restitution to those entities to be paid only after defendant satisfies the award to the victim. See MCL 780.766(8).

Affirmed, but remanded for further proceedings consistent with our opinion. We do not retain jurisdiction.

/s/ Michael R. Smolenski

/s/ Henry William Saad

/s/ Richard A. Bandstra

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<sup>2</sup> We would note that defendant does not dispute that \$659,128.09 represents the reasonable medical expenses incurred by the victim.